



JOINT UNCLASSIFIED STATEMENT OF

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**BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF
REPRESENTATIVES**

**AT A HEARING ENTITLED
“SECTION 702 OF THE FISA AMENDMENTS ACT”**

**PRESENTED
MARCH 1, 2017**

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**Before the
Committee on the Judiciary
United States House of Representatives**

**At a Hearing Entitled
“Section 702 of the FISA Amendments Act”**

March 1, 2017

(U) Introduction

(U) Chairman Goodlatte, Ranking Member Conyers, distinguished members of the Committee, thank you for the opportunity to brief you today about the FISA Amendments Act (“FAA”), particularly Section 702.

(U) The FAA provides authorities the Intelligence Community uses to collect information about international terrorists and other foreign intelligence targets located outside the United States. It has proved to be a critical legal authority to protect our national security. The FAA, in particular Section 702 authority, has also been the subject of extensive oversight and review by all three branches of Government, as well as a comprehensive review conducted in

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2014 by the independent Privacy and Civil Liberties Oversight Board (“PCLOB”) examining FAA’s Section 702 authority. These reviews have universally concluded that the Government is properly using this authority to conduct foreign intelligence collection; no review has identified a single intentional violation of the law.

(U) We begin by discussing Section 702 of the Foreign Intelligence Surveillance Act (“FISA”), the provision that permits targeted surveillance for intelligence purposes of foreign persons located outside the United States with the assistance of U.S. electronic communication service providers. We summarize how Section 702 works, how the Intelligence Community has implemented it, the extensive oversight we conduct of its use, and our transparency efforts to better inform the American public of the scope and protections of this program. We also describe the results of several independent oversight reviews of the Government’s use of Section 702, as well as additional protections that have been added in the last several years. Additionally, we describe the importance of Section 702 to our national security, and give an example of its value in protecting against a variety of threats. A number of further specific examples of the substantial value generated by Section 702 collection will be provided in a classified context. Next, we briefly describe other changes to FISA made by the FAA, including sections 703 and 704, which provide increased protections for Americans’ civil liberties by requiring orders from the Foreign Intelligence Surveillance Court (“FISC”) before the Government may engage in certain kinds of intelligence collection targeting U.S. persons located outside the United States. Prior to the FAA, the Attorney General could authorize such collection without a court order; the FAA added additional protections for U.S. persons by requiring this collection to be authorized by the FISC. Finally, we describe our efforts to facilitate congressional oversight of the FAA.

(U) This Committee plays an important role in overseeing these critical surveillance authorities. We are pleased to provide the Committee with the information it needs regarding the Government’s use of these authorities. After hearings and extensive review of the Government’s use of these surveillance powers, Congress reauthorized the FAA in 2012. We believe that the Committee will continue to agree that the Government has exercised these authorities in an appropriate manner that respects Americans’ privacy and civil liberties while also obtaining foreign intelligence information necessary to protect our national security.

(U) I. Overview of Section 702

(U) Legal Requirements

(U) Many terrorists and other foreign intelligence targets abroad use communications services based in this country, especially those provided by U.S.-based Internet service providers (“ISPs”). Even where a U.S.-based service provider is not used, the communications of a target overseas may transit this country. Before the enactment of Section 702, when the Intelligence Community wanted to collect these communications, it was often confronted with a dilemma. When FISA applied to the collection of such communications from a provider in the United States, the Government had to obtain a court order to obtain such communications. Before the

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FISC may issue a traditional FISA order, the statute requires a finding of probable cause that the target is a foreign power or an agent of a foreign power and that the target is using or about to use the targeted facility, such as a telephone number or e-mail account. The Attorney General, and subsequently the FISC, must approve each individual application. The Constitution does not require this practice, and it proved to be extraordinarily burdensome to require individual court orders for intelligence collection aimed at non-U.S. persons abroad. We know of no other countries that require court orders to authorize intelligence activities targeting foreigners outside their countries.

(U) In 2008, Congress addressed this issue by enacting the FAA, within which Section 702 authorizes the Government to target, with the assistance of providers in the United States, communications of non-U.S. persons located outside the United States to acquire foreign intelligence information. At the same time, Section 702 provides a comprehensive regime of oversight by all three branches of Government to protect the constitutional and privacy interests of Americans.

(U) Under Section 702, instead of issuing individual orders, the FISC approves annual certifications submitted by the Attorney General and the Director of National Intelligence (“DNI”) that specify categories of foreign intelligence that the Government is authorized to acquire pursuant to Section 702. Section 702 contains a number of statutory protections regarding these certifications to ensure that the resulting targeting is properly aimed at non-U.S. persons located outside the United States who are assessed to possess, expected to receive, or are likely to communicate foreign intelligence information that falls within one of those categories. First, the Attorney General and the DNI must certify that a significant purpose of an acquisition is to obtain foreign intelligence information. Second, an acquisition may only intentionally target non-U.S. persons. Third, the Government may not intentionally target any person known at the time of the acquisition to be in the United States. Fourth, the Government may not target someone outside the United States for the purpose of targeting a particular, known person in this country. Fifth, Section 702 protects domestic communications by prohibiting the intentional acquisition of “any communication as to which the sender and all intended recipients are known at the time of the acquisition” to be in the United States. Finally, of course, any acquisition must be consistent with the Fourth Amendment. The certifications are the legal basis for targeting specific non-U.S. persons outside the United States and, based on the certifications, the Attorney General and the DNI can direct communications service providers in this country to assist in collection directed against the Government’s authorized Section 702 targets.

(U) To ensure compliance with these provisions, Section 702 requires targeting procedures, minimization procedures, and acquisition guidelines. The targeting procedures are designed to ensure that the Government targets non-U.S. persons outside the United States, and also that it does not intentionally acquire domestic communications. Moreover, the targeting procedures ensure that targeting of foreign persons is not indiscriminate, but instead targeted at non-U.S. persons outside the United States who are assessed to possess, expected to receive, or are likely to communicate foreign intelligence information. Because Congress understood when it passed the FAA that a targeted non-U.S. person may communicate with, or discuss information concerning, a U.S. person, Congress also required that all collection be governed by minimization procedures that restrict how the Intelligence Community treats any U.S. persons

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whose communications or information might be incidentally collected and regulate the handling of any nonpublic information concerning U.S. persons that is acquired. As further described below, a number of these controls also protect the privacy of non-U.S. persons as a matter of either practice or through additional policy restrictions imposed since Section 702 was enacted (such as restrictions contained in Presidential Policy Directive No. 28). Finally, the acquisition guidelines seek to ensure compliance with all of the limitations of Section 702 described above, and to ensure that the Government files a traditional FISA application when required.

(U) By approving the certifications submitted by the Attorney General and the DNI, as well as the targeting and minimization procedures, the FISC plays a major role in ensuring that acquisitions under Section 702 are conducted in a lawful manner. The FISC carefully reviews the targeting and minimization procedures for compliance with the requirements of both the statute and the Fourth Amendment. The FISC does not, however, confine its review to these documents. As described below, the FISC receives extensive reporting from the Government regarding the operation of, and any compliance incidents involved in, the Section 702 program. When it deems appropriate, the FISC also requires the Government to provide additional descriptive filings and provide testimony at hearings to ensure that the court has a full understanding of the operation of the program. The FISC considers these findings regarding the operation of the program and the Government's compliance annually when it evaluates whether a proposed certification meets all statutory and Constitutional requirements.

(U) **Implementation – Targeting and Acquisition**

(U) The Government will describe in a classified setting the certification or certifications under which the Government is currently acquiring foreign intelligence information. The Attorney General and the DNI must resubmit certifications to the FISC at least once a year. Using these certifications, the Government “targets” non-U.S. persons reasonably believed to be located outside the United States by “tasking selectors,” such as e-mail addresses and telephone numbers, to Section 702 collection. These individual selectors must be assessed to be used by the target to communicate foreign intelligence information of the type covered by the certification.

(U) Thus, as the PCLOB noted in its 2014 report, “the Section 702 program is not based on the indiscriminate collection of information in bulk. Instead, the program consists entirely of targeting specific persons about whom an individualized determination has been made.” Privacy and Civil Liberties Oversight Board, *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*, July 2, 2014, at 111 (hereinafter “PCLOB Report”). The number of individuals targeted under Section 702, however, is substantial, reflecting the critical intelligence provided by this program, but simultaneously a very small percentage of the overseas population, reflecting the fact that targeting is individualized and focused only on specific non-U.S. persons assessed to communicate, receive,

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or possess foreign intelligence information. For example, the Intelligence Community has reported that approximately 94,000 targets were authorized for collection under the Section 702 program in 2015, a minuscule fraction of the over 3 billion Internet users worldwide.

(U) The NSA initiates all Section 702 collection. NSA's targeting procedures require that there be an appropriate foreign intelligence purpose for the acquisition and that the selector be used by a non-U.S. person reasonably believed to be located outside the United States. To determine the location of a user, an analyst must conduct due diligence to identify information in the NSA's possession that may bear on the location or citizenship status of the potential target. NSA's basis for targeting each selector must be documented, and the documentation for every selector is subsequently reviewed by the Department of Justice ("DOJ"). FBI and CIA do not initiate Section 702 collection, but may nominate selectors for collection and receive Section 702- acquired communications.

(U) Once a target has been approved, NSA uses three means to acquire communications. First, with technical assistance from the FBI, it acquires such communications directly from U.S.-based Internet Service Providers ("ISPs"). This has historically been referred to as the PRISM collection. Second, in addition to collection directly from ISPs, NSA also collects electronic communications as they cross the Internet "backbone" within the United States. This is known as "upstream" collection. Upstream collection enables NSA to target terrorists and other foreign intelligence targets who use foreign ISPs. It also enables NSA to collect electronic communications that contain the targeted selector, such as an e-mail address, in the body of a communication between two third parties, even if the communication is not to or from the targeted e-mail address. This collection, often referred to as "abouts" collection, allows NSA to acquire valuable foreign intelligence about a target that it would otherwise miss. It also may identify previously unknown terrorist associates and their e-mail addresses. Third, NSA conducts upstream collection to acquire telephony calls. Unlike the upstream acquisition of Internet communications, NSA's upstream collection of telephony calls only acquires communications that are to or from a specified telephone number of similar selector, not communications that are "about" the tasked telephone number.

(U) Once acquired, all communications are routed to NSA. CIA and FBI only receive a limited portion of the PRISM collection – for example, the FBI may only receive Section 702 information that is relevant to its highest predicated national security investigations – and not any of the communications acquired through NSA's upstream collection, including telephony.

(U) **Implementation – Minimization and Other Protections**

(U) Under the statute, each agency must have "minimization procedures." These are procedures governing the acquisition, retention, and dissemination of communications acquired under Section 702. All agencies' 2015 Section 702 minimization procedures have been released in redacted form to the public. The minimization procedures impose strict access controls with

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respect to the acquired data, regardless of the nationality of the individual to whom it pertains, and require that all personnel who are granted access receive training on the minimization procedures. The minimization procedures require that data be aged off of agency systems after specified periods of time. For example, NSA generally ages off any acquired data that has not been determined to be foreign intelligence information or evidence of a crime within five years of the expiration of the certification. If such data has been acquired from NSA's upstream collection of Internet communications, the data must be aged off within two years of the expiration of the certification. When, despite the Government's reasonable belief to the contrary, a target is found to be located in the United States (or is discovered to be a U.S. person), the procedures require purging of the collected data, with very limited exceptions requiring Director-level approval. Agencies also appropriately identify and purge data acquired as a result of errors relating to the targeting or minimization procedures.

(U) In addition to access and retention restrictions, the minimization procedures for CIA and NSA also restrict the ability of analysts to query data collected under Section 702 using a query term, such as a name or telephone number, associated with a U.S. person. Queries of content by the NSA and CIA are only permitted if they are reasonably designed to identify foreign intelligence information. Because the FBI has a dual national security and law enforcement mission, the FBI may also conduct such queries to identify evidence of a crime. Notably, these queries do not result in the additional collection of any information. Rather, they allow an agency to quickly and effectively locate foreign intelligence information, such as information potentially related to a terrorist plot against the United States, without having to sift through each individual communication collected. Each set of minimization procedures also includes documentation requirements to allow for oversight of such queries by DOJ and the Office of the Director of National Intelligence ("ODNI").

(U) In particular, U.S. person queries of Section 702 collection are used to detect and evaluate connections between United States persons and lawfully targeted non-United States persons involved in perpetrating terrorist attacks and other national security threats. In 2015, after considering the views of an amicus curiae appointed to argue in favor of civil liberties, the FISC found that the authority to query the lawfully acquired Section 702 data using U.S. person query terms for the above purposes was wholly consistent with the provisions of FISA, as well as consistent with the Constitution. Declassified Memorandum Opinion and Order (FISC November 6, 2015) at 44, available at https://www.dni.gov/files/documents/20151106-702Mem_Opinion_Order_for_Public_Release.pdf. The FISC determined that the agencies' querying provisions – including FBI's, which allows for queries for purpose of identifying evidence of a crime – strike a reasonable balance between the privacy interests of U.S. persons and all persons in the U.S., and the government's national security interests. *Id.*

(U) The FISC additionally noted, with regard to the FBI, that such "queries are permitted in part to ensure that the FBI does not fail to identify the foreign-intelligence significance of information in its possession," reminding us that "[o]ne of the main criticisms of the government following the attacks of September 11, 2001, was its failure to identify and appropriately distribute information in its possession that could have been used to disrupt the

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plot.” *Id.* at 42. As a result of past criticisms and recommendations of multiple commissions – including those following the 9/11 and the Fort Hood attacks – the FBI developed a system that permits queries that search multiple datasets, including FISA-acquired data. Such queries will often occur at the beginning stages of an investigation in order to allow the FBI to quickly assess what is already known about a possible threat, and potentially identify communications containing foreign intelligence information about a U.S. person that may reveal a homeland nexus to a national security threat.

(U) There are also additional controls on the dissemination and use of Section 702-acquired information. Before an agency may disseminate information identifying a U.S. person to other entities, the proposed dissemination must meet one of the very few exceptions set forth in the minimization procedures, such as being necessary to understand the foreign intelligence information or assess its importance or evidence of a crime. Like all FISA-acquired information, the statute requires that Section 702-acquired information may only be used in a criminal proceeding with the approval of the Attorney General, Deputy Attorney General, or Assistant Attorney General for National Security. DOJ policy has long extended this same protection to all legal proceedings in the United States. Further, notice is given to individuals who are “aggrieved persons” under the statute if the Government intends to use information against them that is either obtained or derived from Section 702 in U.S. legal or administrative proceedings. And in 2015, the Government announced an additional restriction that prohibited the use in a criminal proceeding of any communication to or from, or information about, a U.S. person acquired under Section 702 except for crimes involving national security or several other serious crimes.

(U) Compliance, Oversight, and Transparency

(U) We are committed to ensuring that the Intelligence Community’s use of Section 702 is consistent with the law, the FISC’s orders, and the protection of the privacy and civil liberties of Americans. The Intelligence Community, DOJ, and the FISC all oversee the use of this authority. This Committee and other Congressional committees also carry out essential oversight, which is discussed separately in section IV below.

(U) First, components in each agency, including Inspectors General, oversee activities conducted under Section 702. This oversight begins with workforce training. NSA, CIA, and FBI all require personnel who target, or nominate for targeting, persons under Section 702 to complete training on the targeting procedures, minimization procedures, and internal agency policies. All Section 702 targeting decisions made by NSA are reviewed at least twice—by an analyst and adjudicator—before tasking, and by NSA compliance personnel after tasking. CIA and FBI require multiple layers of review before nominating selectors to NSA for tasking to Section 702.

(U) Agencies using Section 702 authority must report promptly to DOJ and to ODNI incidents of noncompliance with the targeting or minimization procedures or the acquisition guidelines. Attorneys in the National Security Division (“NSD”) of DOJ routinely review the agencies’

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targeting decisions. Currently, at least once every two months, NSD and ODNI conduct oversight of NSA, FBI, and CIA activities under Section 702. These reviews are normally conducted on-site by a joint team from NSD and ODNI. The team evaluates and (where appropriate) investigates each potential incident of noncompliance, and conducts a detailed review of agencies' targeting and minimization decisions. DOJ reports any incident of noncompliance with the statute, targeting procedures, and minimization procedures to the FISC, as well as to Congress. Oversight of Section 702 activities by DOJ and ODNI has been deep and broad in scope.

(U) Using the reviews by DOJ and ODNI personnel, the Attorney General and the DNI assess semi-annually, as required by Section 702, compliance with the targeting and minimization procedures and the acquisition guidelines. These assessments, which have been regularly produced to this Committee since the inception of the FAA, conclude that the number of compliance incidents has been small relative to the scope of collection, with no indication of any intentional attempt to violate or circumvent any legal requirements. Rather, the assessments have determined that agency personnel are appropriately directing their efforts at specific non- U.S. persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information covered by the certifications.

(U) The independent PCLOB confirmed these findings in its 2014 comprehensive report regarding the Section 702 program. In its report, the Board stated, unanimously, that it was "impressed with the rigor of the government's efforts to ensure that it acquires only those communications it is authorized to collect, and that it targets only those persons it is authorized to target." PCLOB Report at 103. Moreover, the Board identified "no evidence of abuse" of Section 702-acquired information and stated that "the government has taken seriously its obligations to establish and adhere to a detailed set of rules regarding U.S. person communications that it acquires under the program." *Id.* In a declassified 2014 opinion, the FISC similarly noted "[i]t is apparent to the Court that the implementing agencies, as well as [ODNI] and NSD, devote substantial resources to their compliance and oversight responsibilities under Section 702. As a general rule, instances of non-compliance are identified promptly and appropriate remedial actions are taken, to include purging information that was improperly obtained or otherwise subject to destruction requirements under applicable procedures." Declassified Memorandum Opinion and Order (FISC August 26, 2014) at 28, available at <https://www.dni.gov/files/documents/0928/FISC%20Memorandum%20Opinion%20and%20Order%2026%20August%202014.pdf>.

(U) The Intelligence Community and DOJ use the above-described reviews and oversight to evaluate whether changes are needed to the procedures or guidelines, and what other steps may be appropriate under Section 702 to protect the privacy of Americans. We also provide the joint assessments, the major portions of the semi-annual reports, and a separate quarterly report to the FISC. We believe, as the FISC and PCLOB have also concluded, that we have established and maintain a strong oversight regime for this authority.

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(U) Other federal courts have reviewed Section 702 in proceedings where Section 702-derived or obtained information has been used against criminal defendants. After receiving notice from the Government, these defendants have challenged the Section 702 collection on both constitutional and statutory grounds. Every court to consider the issue to date has upheld the legality of the Section 702 collection.

(U) The Intelligence Community and DOJ have also made extensive efforts to provide transparency to the public regarding the operation of the Section 702 program consistent with the need to protect sources and methods. We have declassified and released several FISC opinions regarding the authorization and operation of the Section 702 program, as well as documents related to the 2015 reauthorization of a Section 702 certification, including all of the minimization procedures governing the program. These documents are available at ODNI's public website dedicated to fostering greater public visibility into the intelligence activities of the U.S. Government, *IC on the Record*. In 2014, NSA's Director of Civil Liberties and Privacy Office issued an unclassified report regarding NSA's implementation of Section 702. We also declassified extensive information in the course of the PCLOB's review of the Section 702 program.

(U) II. The Importance of Section 702 Collection

(U) Collection conducted under Section 702 has produced and continues to produce foreign intelligence information that is vital to protect the nation against international terrorism and other threats. It provides information about the plans and intentions of our adversaries, and allows the Government to peer inside their organizations and obtain information about how they function and receive support.

(U) **The Administration believes that Section 702 provides critical foreign intelligence that cannot practicably be obtained through other methods.** To require an individualized court order before acquiring the communications of a foreign terrorist or other foreign intelligence target overseas would have serious adverse consequences. First, in some cases it would likely prevent the acquisition of important foreign intelligence information. The Intelligence Community may not meet the relatively high evidentiary standard of probable cause that an individual targeted under Section 702 is an "agent of a foreign power," as defined in Title I of FISA, even though they may assess he or she is likely to be communicating foreign intelligence information covered by a Section 702 certification. Probable cause is not required in such cases because, as courts have repeatedly held, non-U.S. persons outside the United States generally do not enjoy the protections of the Fourth Amendment. Second, even as to those targets who we have probable cause to believe are agents of foreign powers, eliminating Section 702's more agile targeting requirements would significantly slow the Intelligence Community's ability to acquire important foreign intelligence information in a timely manner. Third, because

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of the number of Section 702 selectors, it is simply not practical to obtain individualized orders on a routine basis. The burden of seeking tens of thousands of individual court orders would overwhelm the Executive and Judicial Branches, an untenable result given the lack of a requirement to seek such orders under the Fourth Amendment. In sum, Section 702 increases the Government's ability to acquire important intelligence information and to act quickly against appropriate foreign targets located outside the United States, without sacrificing constitutional protections.

(U) Section 702 collection is a major contributor to NSA's counterterrorism and other national security efforts. Since its enactment in 2008, the number of signals intelligence reports issued by NSA based at least in part on Section 702 collection has grown exponentially. CIA and FBI state that they have acquired highly valuable and often unique intelligence through Section 702 collection. Numerous real-life examples that demonstrate the broad range of important information that the Intelligence Community has obtained can be provided to the Committee in a classified setting. While these examples which identify specific targets and operations must remain classified, the following declassified example provides just one instance of the many contributions Section 702 has made to our national security.

(U) Specifically, in September 2009, NSA's Section 702 collection against an email address used by an al-Qaeda courier in Pakistan resulted in the acquisition of a communication sent to that address by an unknown individual located in the United States. The message indicated that the United States-based individual was urgently seeking advice regarding how to make explosives. The NSA passed this information to the FBI. Using a National Security Letter, the FBI was able to quickly identify the individual as Najibullah Zazi. Further investigation revealed that Zazi and a group of confederates had imminent plans to detonate explosives on subway lines in Manhattan. Zazi and his co-conspirators were arrested and pled guilty or were convicted of their roles in the planned attack. As the PCLOB found in its report, "[w]ithout the initial tip-off about Zazi and his plans, which came about by monitoring an overseas foreigner under Section 702, the subway-bombing plot might have succeeded." PCLOB Report at 109.

(U) The PCLOB's comprehensive and independent review of the Section 702 program concurred with the Government's assessment of the value of the program. As the Board noted, in addition to disrupting specific plots at home and abroad, Section 702 collection "has proven valuable in a number of ways to the government's efforts to combat terrorism. It has helped the United States learn more about the membership, leadership structure, priorities, tactics, and plans of international terrorist organizations. It has enabled the discovery of previously unknown terrorist operatives as well as the locations and movements of suspects already known to the government." PCLOB Report at 107. The Board further acknowledged the Section 702 program's value in acquiring other foreign intelligence information, examples of which can be provided in a classified setting.

(U) III. Other Provisions of the FAA

(U) While this statement focuses largely on Section 702, the Government believes other FAA provisions also provide critical intelligence tools. In contrast to Section 702, which focuses on foreign targets, Section 704 provides additional protection for collection activities directed against U.S. persons outside of the United States. Prior to the enactment of the FAA, and continuing to this day, section 2.5 of Executive Order 12333 requires the Attorney General to approve the use for intelligence purposes against U.S. persons abroad of “any technique for which a warrant would be required if undertaken for law enforcement purposes,” based on a determination by the Attorney General that probable cause exists to believe the U.S. person is a foreign power or an agent of a foreign power. In addition to the Attorney General’s approval, Section 704 now requires an order from the FISC finding that there is probable cause to believe that the targeted U.S. person is a “foreign power, an agent of a foreign power, or an officer or employee of a foreign power,” as defined under Title I of FISA, and that the target is a person reasonably believed to be located outside the United States. Like section 2.5 of Executive Order 12333, Section 704 applies in circumstances in which the target has “a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes.” By requiring the approval of the FISC, Section 704 provides additional civil liberties protections, and we support its reauthorization as part of a larger reauthorization of the FAA.

(U) In addition to Sections 702 and 704, the FAA added several other provisions to FISA. Section 701 provides definitions for the Act. Section 703 allows the FISC to authorize an application targeting a U.S. person outside the United States where the acquisition is conducted in this country. Like Section 704, Section 703 requires a finding by the FISC that there is probable cause that the target is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power. Section 705 allows the Government to obtain various authorities simultaneously. Section 708 clarifies that nothing in the FAA is intended to limit the Government’s ability to obtain authorizations under other parts of FISA.

(U) IV. Congressional Oversight

(U) Regular and meaningful Congressional oversight of the use of Section 702 and the other provisions of the FAA is an important aspect of the program’s implementation. Twice a year, the Attorney General must “fully inform, in a manner consistent with national security,” the Intelligence and Judiciary Committees about the implementation of the FAA. In addition to this general obligation, the FAA imposes specific requirements. With respect to Section 702, the report must include copies of certifications and directives and copies of significant pleadings and orders. It also must describe compliance matters, any use of emergency authorities, and the FISC’s review of the Government’s pleadings. With respect to sections

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703 and 704, the report must include the number of applications made, and the number granted, modified, or denied by the FISC.

(U) Section 702 also requires the Attorney General and the DNI to provide to the Intelligence and Judiciary Committees our assessment of compliance with the targeting and minimization procedures and the acquisition guidelines, described above. Title VI of FISA augments the other reporting obligations by requiring a summary of significant legal interpretations of FISA in matters before the FISC or the Court of Review. The requirement extends to interpretations presented in applications or pleadings filed with either court by DOJ. In addition to the summary, DOJ must provide copies of FISC decisions that include significant interpretations of the law or novel applications of FISA within 45 days.

(U) DOJ and the Intelligence Community have taken a number of other steps to keep Congress informed. We inform the Intelligence and Judiciary Committees of acquisitions authorized under Section 702. We have reported, in detail, on the results of the reviews and on compliance incidents and remedial efforts. Moreover, we have made all written reports on these reviews available to the Committees.

(U) In addition to both these required and voluntary provisions of information, Congress – to include this Committee– has taken an active role in conducting oversight of FAA authorities through additional hearings and briefings. In 2012, in part due to this extensive oversight, Congress reauthorized the FAA by a bipartisan and overwhelming majority.

(U) Conclusion

(U) Section 702 is a critical foreign intelligence tool that the Intelligence Community has properly used to target non-U.S. persons located outside the United States to acquire information vital to our national security. To protect privacy and civil liberties, this program has operated under strict rules and been carefully overseen by all three branches of the government. We believe that the Intelligence Community’s responsible handling of this important collection authority demonstrates our commitment to adhering to our core values while obtaining the information necessary to protect our Nation.